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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/034,846	12/28/2001	Linda M. Dorschner	KCC 4846 (KC# 16,993)	9653

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EXAMINER

REICHLE, KARIN M

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 06/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/034,846	Applicant(s) DORSCHNER, LINDA M.	
	Examiner Karin M. Reichle	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 70-94,96-98 and 100-106 is/are pending in the application.
- 4a) Of the above claim(s) 70-82,94,96-98,103 and 104 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 83-93,100-102,105 and 106 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 3-29-04 & 12-19-03 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of the Group II invention in the reply filed on 3-29-04 is acknowledged.

2. Claims 70-82, 94, 96-98 and 103-104 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 3-29-04.

3. The restriction between inventions is maintained as proper and made FINAL.

Specification

4. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

For Example:

Drawings

5. The drawings were received on 12-19-03 (Figures 1, 3-6 and 8) and 3-29-04 (Figures 2 and 7). These drawings are approved by the Examiner.

Description

6. The disclosure is objected to because of the following informalities: The Summary of the Invention section, i.e. a description of the claimed invention, and the invention of the claims are not commensurate, see MPEP 608.01(d) and 1302.01.

Claim Language Interpretation

7. Various claim terms have been defined on page 4, line 9-page 8, line 10. All other terminology will be given its common meaning, i.e. dictionary definition.

Claim Rejections - 35 USC § 102

8. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

9. Claims 83-89, 91-92, and 105-106 are rejected under 35 U.S.C. 102(b) as being anticipated by Clear et al, PCT '367.

Claims 105-106: See Figures 1 or 2, i.e. surface area of core 28 is less than or equal to "about" 50% of the surface area of the article, liner is 24, cover is 26. It is noted that the terminology "about" allows some leeway from the dimension it describes. With regard to the front edge being closer to the front end than the back edge is to the back end, see page 13, lines 12-15 and page 12, line 15-page 13, line 2.

Claims 83-88: see page 3, line 5-page 4, line 5, page 7, lines 13-14, page 9, lines 4-28, page 10, lines 9-13, page 10, line 28-page 11, line 10, page 13, lines 3-23, page 15, line 13-page 17, line 16 and page 5, lines 20-23 as well as page 6, lines 6-18 and 22-25 and page 5, last 9 lines

Art Unit: 3761

of the instant specification, i.e. the cover and liner are at least extensible and at most elastomeric, i.e. "but not necessarily elastomeric" infers "but not unnecessarily elastomeric", i.e. could be elastomeric, in both the longitudinal direction, i.e. panel 38, and the transverse direction, i.e. waist panel 34. With regard to claims 84-89, lines 3 et seq thereof recite capability of the claimed structure. See the portions of Clear cited supra, i.e. Clear et al teaches a cover and liner capable of lateral elongation and substantially permanent elongation laterally. Therefore, Clear et al includes all the claimed structure. Thus there is sufficient factual basis for one to conclude that the capabilities of such claimed structure would also be inherent in the same structure of Clear et al, see MPEP 2112.01

10. Claims 83-89, 91-92, 100-102 and 105-106 are rejected under 35 U.S.C. 102(b) as being anticipated by Roe et al '673.

Claims 83, 100-102 and 105-106, see Figures 1 and 3-4, col. 4, lines 43-50, col. 6, lines 20-26 and 29-35, col. 22, Table 1, Sample X, col. 22, lines 56 et seq, col. 23, lines 5-9, col. 25, lines 19-45, i.e. surface area of core 28 is less than or equal to "about" 50% of the surface area of the article, liner is 24, cover is 26. It is noted that the terminology "about" allows some leeway from the dimension it describes. With regard to the front edge being closer to the front end than the back edge is to the back end, see col. 4, lines 43-50 and figures 1 and 3-4. The surface area of the portion of the core which extends into the front half of the article has a surface area which is less than about 30% of the surface area of the front half of the article, see again col. 23, lines 5-9. It is noted the article includes both the chassis 22 and the belt 32.

Claims 84-89 and 91-92: see the portions cited supra as well as Buell '092 incorporated thereby at col. 17, line 30-col. 18, line 27, col. 36, lines 10-35, col. 10, lines 8-37, col. 11, lines

Art Unit: 3761

9-51 (Note the discussion supra with regard to the language "but not necessarily elastomeric"), and col. 42, lines 1-11. With regard to claims 84-89, lines 3 et seq thereof recite capability of the claimed structure. See the portions of Roe and Buell cited supra, i.e. teaches a cover and liner capable of lateral elongation and substantially permanent elongation laterally. Therefore, Roe includes all the claimed structure. Thus there is sufficient factual basis for one to conclude that the capabilities of such claimed structure would also be inherent in the same structure of Roe et al, see MPEP 2112.01

Claim Rejections - 35 USC § 103

11. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

12. Claim 90 is rejected under 35 U.S.C. 103(a) as being unpatentable over Clear et al in view of Morman et al, PCT '913.

See page 1, line 17 and page 9, lines 8-9 of Clear et al, i.e. desire for aesthetically pleasing fit and clothlike appearance. Applicant claims an outer cover of a necked laminate of certain materials which Clear et al does not teach. However see Morman '913 at the abstract, page 18, lines 3-15 and page 19, lines 12-14, i.e. necked laminate of claimed materials used in diaper to improve fit and clothlike appearance. To employ an outer cover including a necked laminate as taught by Morman, i.e. as claimed, on the Clear device would be obvious to one of ordinary skill in the art in view of the recognition that such would provide a more aesthetically pleasing fit and clothlike appearance and the desire of such by Clear et al.

Art Unit: 3761

13. Claim 93 is rejected under 35 U.S.C. 103(a) as being unpatentable over Roe et al in view of Divo et al, PCT '714.

Applicant claims an outer cover comprising spunbond polypropylene laminated with an SIS adhesive which Roe et al does not teach. However see portions of Roe et al cited supra (Applicant's attention is also invited to definition of "nonwoven" in Materials Handbook, i.e. includes spunbond polyolefins, i.e. polypropylene), i.e. outer cover of Roe et al includes spunbond polypropylene which is laminated to elastic by meltblown adhesive to form zero strain laminate to be ring rolled. See also Divo et al at col. 1, line col. 3, lines 29-55, col. 4, lines 35-56, col. 6, lines 31-39, col. 8, lines 6-33, col. 10, lines 8-15, i.e. SIS adhesive applied by a melt blown process is used to attach nonelastic nonwoven layer to elastic layer to form zero strain laminate to be ring rolled. To substitute the adhesive as taught by Divo et al for the adhesive of Roe et al would be obvious, see *In re Siebentritt*, 54 CCPA 1083, i.e. two equivalents are interchangeable for their desired function, express suggestion of desirability of substitution not needed to render such substitution obvious.

Response to Arguments

14. Applicants remarks with regard to form on pages 17-20 have been noted but are either deemed moot because the issue has not been reraised or deemed not persuasive for the reasons set forth supra. With regard to Applicant's remarks on pages 20-32 with respect to the prior art, the remarks with regard to the withdrawn claims have been noted and the remarks with regard to Cohen and Hasse et al are deemed moot in that the rejections based on such references have not been repeated. Support for claim 105 with regard to the front and back ends and edges is

Art Unit: 3761

provided by the Figures as originally filed. However it is also noted that the criticality of such does not appear to be set forth. With regard to claim 105, Applicant's remarks with respect to Clear have been noted but are deemed not persuasive in light of the portions of the reference set forth supra. With regard to Applicant's remarks with respect to the claims 84-89, such remarks have been considered but are deemed not persuasive in that they are narrower than the claim language, e.g. claims 85-87 do not recite an elongation merely the capability thereof, they are narrower than the teachings of the references as well as MPEP 2112.01, i.e. same structure and no provision of rebuttal evidence showing that the prior art products do not necessarily possess the characteristics of the claimed product although they include all the claimed structure.

Conclusion

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Huber reference already of record as well as Roe et al '145 also show the claimed relationship of the front and back ends and edges. Chappell et al is cited by Roe et al along with Buell '092 discussed supra with regard to extensible portions thereof.

16. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

Art Unit: 3761

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any new grounds of rejection were necessitated by the addition of claims 105-106.

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (703) 308-2617. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703) 308-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

K. M. Reichle
Karin M. Reichle
Primary Examiner
Art Unit 3761

KMR
June 7, 2004